

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. APPLICATION NO. 10/073,950
ATTORNEY DOCKET NO. Q68411

REMARKS

Applicant thanks the Patent Office for acknowledging Applicant's claim to foreign priority, and for indicating that the certified copy of the priority document, French Patent Application No. 01 02 527 dated February 23, 2001, has been made of record in the file.

Applicant thanks the Patent Office for initialing the references listed on the PTO-1449 form submitted with the Information Disclosure Statement filed on February 14, 2002, thereby confirming that the listed references have been considered.

Applicant requests that the Patent Office indicate in the next Communication if the Drawings filed on February 14, 2002 are acceptable.

Claims 1-16 have been examined on their merits.

Applicant thanks the Patent Office for indicating that claims 1-6 are allowed.

Applicant herein cancels claims 9, 10, 14 and 15 without prejudice and/or disclaimer.

Applicant herein editorially amends claims 1 and 3. The amendments to claims 1 and 3 were not made for reasons of patentability, do not narrow the literal scope of the claims and do not implicate an estoppel in the application of the doctrine of equivalents.

Applicant herein rewrites claims 5-8, 11-13 and 16 in independent form.

Applicants herein add new claims 17-20. Support for the new claims 17-20 can be found in the specification. Applicant submits that new claims 17-20 are allowable for at least reasons analogous to those for claim 1. Entry and consideration of the new claims 17-20 is respectfully requested.

Claims 1-8, 11-13 and 16-20 are all the claims presently pending in the application.

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1. Claims 7-11 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chin (U.S. Patent No. 6,690,938) in view of Applicant's Admitted Prior Art (AAPA). The rejection of claims 9 and 10 is now moot due to their cancellation. Applicant traverses the rejection of claims 7, 8 and 11 for at least the reasons discussed below.

The burden of establishing that a claimed invention is *prima facie* obvious rests on the USPTO. *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). To make its *prima facie* case of obviousness, the USPTO must satisfy three requirements:

- a) The prior art relied upon, coupled with the knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the artisan to modify a reference or to combine references. *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).
- b) The proposed modification of the prior art must have had a reasonable expectation of success, as determined from the vantage point of the artisan at the time the invention was made. *Amgen, Inc. v. Chugai Pharm. Co.*, 927 F.2d 1200, 1208, 18 U.S.P.Q.2d 1016, 1022-23 (Fed. Cir. 1991).
- c) The prior art reference or combination of references must teach or suggest all the limitations of the claims. *In re Vaeck*, 947 F.2d 488, 493, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991); *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (CCPA 1970).

The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, the nature of a problem to be solved. *In*

re Dembiczak, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Alternatively, the motivation may be implicit from the prior art as a whole, rather than expressly stated. *Id.*

Regardless of whether the USPTO relies on an express or an implicit showing of motivation, the USPTO is obligated to provide particular findings related to its conclusion, and those findings must be clear and particular. *Id.* A broad conclusionary statement, standing alone without support, is not “evidence.” *Id.*; *see also, In re Zurko*, 258 F.3d 1379, 1386, 59 U.S.P.Q.2d 1693, 1697-98 (Fed. Cir. 2001).

In addition, a rejection cannot be predicated on the mere identification of individual components of claimed limitations. *In re Kotzab*, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000). Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. *Id.*

The Patent Office acknowledges that Chin fails to teach or suggest that a second entity signals to a first entity its global processing capacity, capacity credit and a consumption law, and the first entity updates the capacity credit on the basis of the consumption law. The Patent Office alleges that Chin disclose, *inter alia*, if a capacity credit in an uplink and/or downlink direction falls below a given first threshold, any new call is rejected until the capacity credit is again above a given second threshold that is greater than or equal to the first threshold, as recited in claim 7.

However, the combination of Chin and AAPA fails to teach or suggest at least if a capacity credit in an uplink and/or downlink direction falls below a given first threshold, any new call is rejected until the capacity credit is again above a given second threshold that is

greater than or equal to the first threshold, as recited in claim 7. At best, the combination of Chin and AAPA discloses rejecting a new call until the capacity credit is above a single predetermined threshold. The Patent Office cites several passages in Chin (col. 4, lines 29-44; col. 5, lines 60-67; col. 6, lines 1-13; col. 7, lines 13-35; col. 11, lines 64-67; col. 12, lines 10-26) that allegedly disclose the two thresholds recited in claim 7. However, Figure 6 of Chin is clear that only one threshold is disclosed. For example, in Figure 6, a threshold-establishing step 92, a determination is made as to whether the current traffic resources are at or below a predetermined threshold. If the resources are below the predetermined threshold, supplemental channels are requested until the traffic resources are above the predetermined threshold. However, the combination of Chin and AAPA fails to teach or suggest that new calls are rejected until the current traffic resources are above a second threshold, which is greater than or equal to the predetermined threshold (*i.e.*, the first threshold). Instead, the combination of Chin and AAPA keeps accepting calls by using supplemental channels to fill the resource requests. *See, e.g.*, resource releasing step 98 of Figure 6; col. 12, lines 10-17. Thus, Applicant submits that the Patent Office cannot fulfill the “all limitations” prong of a *prima facie* case of obviousness, as required by *In re Vaeck*.

Based on the foregoing reasons, Applicant submits that the combination of AAPA and Chin fails to teach or suggest all of the claimed elements as arranged in claim 7. Thus, Applicant submits that claim 7 is allowable, and respectfully requests that the Patent Office reconsider and withdraw the § 103(a) rejection of claim 7.

Applicant submits that new independent claims 8 and 11 are allowable as well for at least reasons analogous to those discussed above with respect to claim 7. Applicant submits that claims 8 and 11 are allowable, and respectfully requests that the Patent Office reconsider and withdraw the § 103(a) rejection of claims 8 and 11.

2. Claims 12-16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chin in view of AAPA. The rejection of claims 14 and 15 is now moot due to their cancellation. Applicant traverses the rejection of claims 12, 13 and 16 for at least the reasons discussed below.

With respect to independent claim 12, Chin fails to teach or suggest load control and/or call admission based on capacity credit falling below a given threshold. Chin is directed towards reducing dropped or blocked calls due to insufficient traffic resources. *See, e.g.*, col. 2 lines 28-31). In Chin, where resources comprise traffic resources and supplemental resources, there are mechanisms to selectively de-allocate supplemental resources and re-allocate them as traffic resources, if necessary. In contrast, the invention recited in claim 12 provides load control and/or call admission control, and the purpose of load control and/or call admission control is not to reduce dropped or blocked calls due to insufficient traffic resources. The purpose of load control is to prevent, detect and, if appropriate, correct overloads in order to prevent quality to be degraded, and the purpose of call admission control is to decide if the capacity of a cell not being used at a given time is sufficient to accept a new call in that cell. Thus, Applicant submits that

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the Patent Office cannot fulfill the “all limitations” prong of a *prima facie* case of obviousness, as required by *In re Vaeck*.

Based on the foregoing reasons, Applicant submits that the combination of AAPA and Chin fails to teach or suggest all of the claimed elements as arranged in claim 12. Thus,

Applicant submits that claim 12 is allowable, and respectfully requests that the Patent Office reconsider and withdraw the § 103(a) rejection of claim 12.


Applicant submits that new independent claims 13 and 16 are allowable as well for at least reasons analogous to those discussed above with respect to claim 12. Applicant submits that claims 13 and 16 are allowable, and respectfully requests that the Patent Office reconsider and withdraw the § 103(a) rejection of claims 13 and 16.

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In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


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